

# Agenda Item Form

Agenda Date: 3/23/04

Districts Affected: #8

Dept. Head/Contact Information: Parks and Recreation Department, Dr. Bill Torgerson, 541-4331

## Type of Agenda Item:

- |   |   |   |
|---|---|---|
| <input type="checkbox"/> Resolution                       | <input type="checkbox"/> Staffing Table Changes   | <input type="checkbox"/> Board Appointments                   |
| <input type="checkbox"/> Tax Installment Agreements       | <input type="checkbox"/> Tax Refunds              | <input type="checkbox"/> Donations                            |
| <input type="checkbox"/> RFP/ BID/ Best Value Procurement | <input type="checkbox"/> Budget Transfer          | <input type="checkbox"/> Item Placed by Citizen               |
| <input type="checkbox"/> Application for Facility Use     | <input type="checkbox"/> Bldg. Permits/Inspection | <input checked="" type="checkbox"/> Introduction of Ordinance |
| <input type="checkbox"/> Interlocal Agreements            | <input type="checkbox"/> Contract/Lease Agreement | <input type="checkbox"/> Grant Application                    |
| <input type="checkbox"/> Other _____                      |   |   |

## Funding Source:

- ☒ General Fund  
☐ Grant (duration of funds: \_\_\_\_\_ Months)  
☐ Other Source: \_\_\_\_\_

## Legal:

- ☒ Legal Review Required      Attorney Assigned (please scroll down): John Nance      ☒ Approved      ☐ Denied

Timeline Priority: ☒ High      ☐ Medium      ☐ Low      # of days: \_\_\_\_\_

## Why is this item necessary:

Fundraising Event by Parents Association for Recreation for Kids

## Explain Costs, including ongoing maintenance and operating expenditures, or Cost Savings:

City shall provide monetary support of \$400 towards fees in consideration for use of park

## Statutory or Citizen Concerns:

none anticipated

## Departmental Concerns:

none

HO TT LU 81 000 1002  
INVENTORY 000 000 000 000

AN ORDINANCE PERMITTING PARENTS ASSOCIATION FOR RECREATION FOR KIDS, INC.  
TO USE A PORTION OF WHITE SPUR PARK  
FROM 1:00 PM UNTIL 5:00 PM ON APRIL 25, 2004

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the Mayor be authorized to sign, on behalf of the City of El Paso, an Agreement with Parents Association for Recreation for Kids, Inc. authorizing the use of a portion of White Spur Park, located at 4800 Love Road, El Paso, Texas from 1:00 PM until 5:00 PM on April 25, 2004. and the City shall provide monetary support of \$400.00 towards fees in consideration for that use.

PASSED AND APPROVED this 6<sup>th</sup> day of April, 2004 .

CITY OF EL PASO

\_\_\_\_\_  
JOE WARDY, MAYOR

ATTEST:

\_\_\_\_\_  
RICHARDA DUFFY MOMSEN, CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
JOHN F. NANCE  
ASSISTANT CITY ATTORNEY

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
R. WILLIAM TORGERSON, ACTING DIRECTOR  
PARKS AND RECREATION DEPARTMENT

## AGREEMENT

WITNESSETH:

WHEREAS, APPLICANT desires to use a portion of White Spur Park, located at 4800 Love Road in El Paso, El Paso County, Texas, for a fundraising event; hereinafter called "EVENT";

NOW, THEREFORE, the CITY and APPLICANT agree as follows:

- In the event that the APPLICANT fails to vacate the PARK and remove all equipment and other items by 5:00 PM on April 25, 2004, the CITY may, at its option and within its sole discretion, either extend the time for removal or remove the other materials and charge the cost thereof to the APPLICANT. The APPLICANT agrees to pay all reasonable cost(s) incident to such removal

by the CITY.

3. CONSIDERATION. The City shall provide monetary support of \$400.00 towards fees for use of White Spur Park for the EVENT.

4. TERMS AND CONDITIONS.

a. APPLICANT agrees and covenants to keep the PARK in good repair and condition during the term of this agreement and to remove all debris, rubbish and all material from the PARK by 5:00 PM on April 25, 2004.

b. APPLICANT agrees that the PARK will be used solely for the purpose of holding the EVENT, which shall include tents, tables and chairs.

c. APPLICANT understands and agrees that the CITY is not and will not be responsible for the safety or security of any equipment, booths or structures or other materials associated with the EVENT nor will the CITY be responsible for any damage to any equipment or materials used in connection with EVENT.

d. APPLICANT shall purchase public liability insurance and property damage insurance from an insurance company approved by the Director, naming the CITY as an additional insured in the amount of \$500,000 per person and \$1,000,000 per occurrence for personal injuries or death growing out of any one accident or other cause; and One Hundred Thousand and No/100 Dollars (\$100,000.00) for property damage covering the PARK and the Premises for the duration of this agreement. Certificate of Insurance or binders must be delivered to the Director of Parks and Recreation or his designee at least five (5) working days prior to the EVENT.

e. INDEMNIFICATION.

**APPLICANT SHALL INDEMNIFY AND HOLD THE CITY HARMLESS AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS, AND EXPENSES, INCLUDING INVESTIGATION EXPENSES AND REASONABLE ATTORNEY FEES FOR THE DEFENSE OF SUCH CLAIMS**

AND DEMANDS, ARISING OUT OF, OR ATTRIBUTED DIRECTLY OR INDIRECTLY TO, THE CONDUCT, ACTS OR OMISSIONS OF APPLICANT, ITS INVITEES, AGENTS, CONTRACTORS, EMPLOYEES, SUBTENANTS, CONCESSIONAIRES, OR LICENSEES, OR ANY THIRD PARTIES. APPLICANT FURTHER AGREES TO INDEMNIFY, DEFEND AND HOLD THE CITY HARMLESS FROM ANY CLAIMS OR COSTS, INCLUDING LEGAL FEES, WHICH MIGHT ARISE FROM USE OF ANY PATENTED, TRADEMARKED, FRANCHISED OR COPYRIGHTED MUSIC, MATERIALS, DEVICES, PROCESSES OR DRAMATIC RIGHTS USED IN CONNECTION WITH THE EVENT. APPLICANT FURTHER EXPRESSLY AGREES TO INDEMNIFY THE CITY FROM ANY AND ALL CLAIMS ARISING, IN WHOLE OR IN PART, FROM THE CONDUCT, ACTS OR OMISSIONS OF THE CITY, EVEN WHERE SUCH CLAIMS MAY INVOLVE NEGLIGENCE OR ALLEGATIONS OF NEGLIGENCE ON THE PART OF THE CITY OR ITS OFFICERS, EMPLOYEES OR AGENTS.

f. APPLICANT agrees to reimburse the CITY for the cost of any repair to the PARK occasioned by excessive damage arising from the EVENT, as determined to be reasonably necessary in the judgment of the Director of Parks and Recreation Department.

g. APPLICANT agrees to reimburse the CITY for any damage to any irrigation system or other improvements, including but not limited to, sprinkler heads and landscaping which results from the use of any equipment or other materials used in connection with the setting-up and operating of the EVENT.

h. APPLICANT agrees that it will remove from the PARK and contiguous area all trash and litter generated by the EVENT. APPLICANT will clean up litter, etc. and place in the PARK trash receptacles on site.

i. APPLICANT understands and agrees that it will perform no excavation unless the location for such excavation is approved and staked by the Department of Parks and Recreation

prior to the actual excavation.

j. APPLICANT understands and agrees that it will not use any heavy equipment nor drive any vehicle onto the PARK grass area without the specific prior written approval by the Director of the Parks and Recreation Department or his designee.

k. APPLICANT agrees to obtain any necessary permits from the City's Building Services Department for a temporary structure or electrical work to be done in connection with the EVENT. APPLICANT agrees that it will obtain a charitable solicitations permit, any food establishment permits or any other permits required, and hereby agrees to comply with all applicable state laws and City ordinances.

l. This agreement constitutes permission for APPLICANT to use sound amplification devices in connection with the EVENT pursuant to the requirements of Chapter 13.28 of the El Paso Municipal Code. APPLICANT may use such sound amplification devices only insofar as they do not cause such noise as to unreasonably discomfort persons of ordinary sensibilities living nearby. No amplifying devices of any kind shall be used after 5:00 PM during the term of this agreement.

m. This agreement shall be effective as of the date first entered above. All proposals and negotiations, notices and representations with reference to matters covered by this agreement are merged into this instrument and no amendment or modification except as otherwise provided herein shall be valid unless evidenced in writing and signed by both parties.

n. APPLICANT understands and agrees that in the event of public necessity, acts of God, or other circumstances beyond the control of the CITY, it becomes necessary for the CITY to cancel this agreement, the CITY may do so without liability of any type to APPLICANT, and APPLICANT forever releases CITY from any and all claims whatsoever occasioned by cancellation pursuant to this paragraph.

o. APPLICANT understands and agrees that if the EVENT is canceled by the APPLICANT due to public necessity, acts of God, or other circumstances, the CITY is not liable to Refund the required payment for the use of the PARK.

p. APPLICANT expressly agrees that, in all things relating to this Agreement, the CITY is performing a governmental function, as defined by the Texas Tort Claims Act. APPLICANT further expressly agrees that every act or omission of the CITY which, in any way, pertains to or arises out of to this Agreement falls within the definition of governmental function.

q. Independent of, severable from, and to be enforced independently of any other enforceable or unenforceable provision of this Agreement, **THE CITY OF EL PASO WILL NOT BE LIABLE TO APPLICANT (NOR TO ANY PERSON CLAIMING RIGHTS DERIVED FROM THE APPLICANT'S RIGHTS) FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND** including lost profits, loss of business, or other economic damage, and further including injury to property, mental anguish and emotional distress **AS A RESULT OF BREACH OF ANY TERM OF THIS AGREEMENT, REGARDLESS OF WHETHER THE CITY OF EL PASO WAS ADVISED, HAD OTHER REASON TO KNOW, OR IN FACT KNEW OF THE POSSIBILITY THEREOF.**

r. Independent of, severable from, and to be enforced independently of any enforceable or unenforceable provision of this Agreement, **IN NO EVENT SHALL THE CITY OF EL PASO'S AGGREGATE LIABILITY TO APPLICANT (INCLUDING LIABILITY TO ANY PERSON OR PERSONS WHOSE CLAIM OR CLAIMS ARE BASED ON OR DERIVED FROM A RIGHT OR RIGHTS CLAIMED BY APPLICANT), WITH RESPECT TO ANY AND ALL CLAIMS AT ANY AND ALL TIMES ARISING FROM OR RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT, IN CONTRACT, TORT, OR OTHERWISE, EXCEED THE AMOUNT OF CONSIDERATION ACTUALLY PAID BY THE APPLICANT TO THE CITY UNDER THE TERMS**

**OF THIS AGREEMENT.**

s. APPLICANT and CITY each acknowledges that the provisions of this Agreement were negotiated to reflect an informed, voluntary allocation between them of all risks (both known and unknown) associated with the transactions associated with this Agreement. The disclaimers and limitations in this Agreement are intended to limit the circumstances of liability. The remedy limitations, and the limitations of liability, are separately intended to limit the forms of relief available to the Parties.



WITNESS THE FOLLOWING SIGNATURES AND SEAL on the day and year first written above.

CITY OF EL PASO

\_\_\_\_\_  
Joe Wardy, Mayor

ATTEST:

Parent Association for Recreation for  
Kids, Inc.

\_\_\_\_\_  
Richarda Duffy Momsen

By: Sabrina Crowley  
Name(printed) Sabrina Crowley  
Title General Co. Coordinator

APPROVED AS TO FORM:

John F. Nance  
John F. Nance  
Assistant City Attorney

APPROVED AS TO CONTENT:

R. William Torgerson  
R. William Torgerson, Acting Director  
Parks and Recreation

ITEMIZED COST FOR THE USE OF  
WHITE SPUR PARK  
By PARENT ASSOCIATION FOR RECREATION FOR KIDS, INC.  
FOR A FUNDRAISING EVENT  
FROM 1:00 PM UNTIL 5:00 PM ON APRIL 25, 2004

- A. PARK USE-(THE CITY SHALL PROVIDE MONETARY SUPPORT OF \$400.00 TOWARD FEES)